

FILE COPY
No. 542

FILED
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CHARLES E. BURKE

IN THE
Supreme Court of the United States

October Term, 1947.

55-Miscellaneous-

COMMONWEALTH OF PENNSYLVANIA ex rel.
FRANK TOWNSEND,

v.
C. J. BURKE, WARDEN EASTERN STATE PENITEN-
TIARY, PHILADELPHIA, PENNSYLVANIA.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

JOHN H. MAURER,
District Attorney,
600 City Hall,
Philadelphia, Pennsylvania,
Attorney for Respondent.

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**ANSWER OF JOHN H. MAURER, DISTRICT ATTORNEY,
TO PETITION OF FRANK TOWNSEND FOR WRIT
OF CERTIORARI.**

• The defendant was indicted by the Grand Jury in and for the County of Philadelphia, Commonwealth of Pennsylvania, on June 1, 1945, with other defendants, on the following bills of indictment as of May Sessions, 1945:

No. 696, Armed Robbery—Plead Guilty

No. 697, Armed Robbery—Plead Not Guilty—Acquitted

No. 698, Attempted Armed Robbery—Plead Guilty

No. 699, Burglary with intent to rob—Plead Guilty

No. 700, Burglary with intent to rob—Plead Not Guilty—Acquitted

No. 701, Burglary with intent to rob—Plead Guilty.

He was sentenced on Bill No. 698 under the provisions of the Act of Assembly of June 24, 1939, P. L. 872, Section 705, 18 P. S. §4705, which provides:

“Whoever, being armed with an offensive weapon or instrument, robs or assaults with intent to rob another; or, together with one or more persons, robs or assaults with intent to rob; * * * shall be sentenced to pay a fine not exceeding ten thousand dollars (\$10,000) or undergo imprisonment, by separate or solitary confinement at labor, not exceeding twenty (20) years, or both.”

He was sentenced by the Honorable Harry S. McDevitt, presiding judge, to ten to twenty years in Eastern State Penitentiary to be computed from June 5, 1945.

The defendant was indicted by the Grand Jury in and for the County of Philadelphia, Commonwealth of Pennsylvania, on April 13, 1945, together with Edward Keenan, on Bill No. 300 of April Sessions, 1945, attempted burglary,

to which the defendants originally plead not guilty on June 5, 1945. On October 24, 1945, they changed their pleas to guilty. Defendant Townsend was sentenced by the Honorable James Gay Gordon, Jr., presiding judge, to not less than one month nor more than five years in Eastern State Penitentiary to be computed after the sentence on Bill No. 698 of May Sessions, 1945.

The defendant was indicted by the Grand Jury in and for the County of Philadelphia, Commonwealth of Pennsylvania, on June 1, 1945 on Bill of Indictment No. 691 of May Sessions, 1945 for carrying concealed deadly weapon and carrying a revolver without a license. On June 5, 1945, he plead not guilty, but on October 24, 1945 he changed his plea to guilty. He was sentenced by the Honorable James Gay Gordon, Jr., presiding judge, to one month in Eastern State Penitentiary after sentence on Bill No. 300 of April Sessions, 1945.

The crimes for which the defendant was indicted occurred between March 24 and April 29, 1945. He became a fugitive. Thereupon he was indicted as a fugitive. In order to indict as a fugitive in Pennsylvania, a petition has to be presented to the Court of Quarter Sessions by the District Attorney, stating the fact that the defendant is a fugitive, and asking leave of Court to present the facts to the jury for the purpose of indictment which was done in this case. In such a case, when the defendant is apprehended, he is brought into court and arraigned. If he pleads guilty, the Court may, and generally does, hear the facts and pass sentence as in this case. If he pleads not guilty, arrangements are then made for trial. Under the law of Pennsylvania,

(a) When a defendant pleads guilty there is no requirement that he have counsel to represent him, and

(b) The only time it is obligatory on the Court to appoint counsel is in cases of murder.

Practically two years after he was sentenced, Townsend filed a petition for a writ of habeas corpus in the Supreme

Court of Pennsylvania, to which an answer was filed. The Court, after consideration of the petition and answer, dismissed the petition and refused the writ on May 26, 1947. Thereafter, on July 10, 1947, a petition filed in United States District Court for Eastern District of Pennsylvania, alleging exactly the same facts, was dismissed after hearing by the said Court on July 15, 1947 and no appeal taken.

The defendant Townsend does not claim and never has claimed, that he is innocent. The sentences imposed and which he is serving are in accordance with law.

Your respondent prays that the petition for writ of certiorari be denied, and he will ever pray.

JOHN H. MAURER,

District Attorney of Philadelphia
County.

Commonwealth of Pennsylvania }
City and County of Philadelphia }

John H. Maurer, being duly sworn according to law, deposes and says that he is District Attorney of Philadelphia County, and that the facts set forth in the foregoing answer are true and correct according to the best of his knowledge, information and belief.

JOHN H. MAURER.

Sworn to and subscribed before me this 3rd day of November, A. D. 1947.

EDW. H. WHITE, JR.,
Notary Public.

(Seal)

My Commission Expires March 9, 1951.

ARGUMENT.

The defendant Townsend claims that the Courts of Pennsylvania are bound to supply a man with counsel when charged with a crime. This is not and never has been the law in Pennsylvania, and is not in accordance with the Constitution of Pennsylvania. The Constitution of Pennsylvania, Article 1, Section 9, provides:

"In all criminal prosecutions the accused hath the right to be heard by himself and his counsel * * *."

Such a question was raised and fully discussed in *Commonwealth ex rel. McGlinn v. Smith*, 344 Pa. 41. The decisions of the United States Supreme Court and of the Supreme Court of Pennsylvania were considered. On page 48, the Court said:

"The right guaranteed by the Pennsylvania Constitution (Art. 1, Sec. 9) of an accused to be "*heard by counsel*" has never been challenged or abridged in this Commonwealth; the right of an accused to be *supplied with counsel when none is asked for* was never until recent years asserted in this Commonwealth. This court has never countenanced the idea that the accused in a criminal case when the charge is other than murder is being deprived of a constitutional right if he is not informed in advance of his trial that counsel will be assigned him upon request."

In further discussing the case, the Supreme Court of Pennsylvania held that during two and a half centuries of its existence it had never been held "the duty of trial courts to provide (except in capital cases) counsel for accused persons where none was asked for * * *."

Referring to the decisions of the Supreme Court of the

United States, the interpretation of the highest court of the State must always be given consideration.

In the McGlinn case, the defendant went to trial before a jury without counsel, testified in his own behalf and was convicted.

This defendant Townsend did not go to trial. He had been a fugitive and he came in court and plead guilty to four bills of indictment on one of which he was sentenced, and later he plead guilty on two other bills of indictment on which he was given very light sentences to run consecutively to the first sentence of ten to twenty years. The defendant Townsend knew he was guilty of robbery and attempted robbery with others with the use of a weapon, and plead guilty thereto. His only allegation is that if he had had a lawyer he might not have been given as heavy a sentence. The defendant had, however, been arrested a number of times and convicted, and sentenced prior to these last sentences, and was familiar with Court procedure. He does not now claim that he was not guilty.

A writ of habeas corpus is not an appeal and is not to be used to review a conviction. This has been held again and again as decided in *Commonwealth ex rel McGlinn v. Smith*, 344 Pa. 41.

The defendant Townsend has not denied his guilt and therefore his sentence being lawful upon pleas of guilty, we urge that the petition for certiorari be dismissed.

Respectfully submitted,

JOHN H. MAURER,
District Attorney.